



County of Bernalillo
State of New Mexico

Planning and Development Services

111 Union Square SE, Suite 100

Albuquerque, New Mexico 87102

Office: (505) 314-0350

www.bernco.gov/zoning-building-and-planning/

NOTICE OF APPEAL

Corrected

December 31, 2014

COMMISSIONERS

Debbie O'Malley, Chair
District 1

Art De La Cruz, Vice Chair
District 2

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District 3

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District 4

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District 5

COUNTY MANAGER

Tom Zdunek

ELECTED OFFICIALS

Tanya R. Giddings
Assessor

Maggie Toulouse Oliver
Clerk

Willow Misty Parks
Probate Judge

Dan Houston
Sheriff

Manny Ortiz
Treasurer

To Whom It May Concern:

The following appeal has been filed with the Bernalillo County Planning and Development Services:

APPEAL NO: ZCOA2015-0006 ORIGINAL CASE NO: CZ-20130009

APPELLANT: Name: Southwest Organizing Project

Address: 211 10th St. SW, Albuquerque, NM 87102

REASON FOR APPEAL: See Attached

SCHEDULED FOR PUBLIC HEARING BEFORE THE BOARD OF COUNTY COMMISSIONERS ON:

Thursday, February 19, 2015 at 1:30 P.M., at the Vincent E. Griego Chambers, Concourse Level II, One Civic Plaza, NW.

You and all other interested parties are invited and urged to be present at this hearing.

Applicants, agents and those in support or opposition to a request are now required to submit all evidence and presentation materials to the Board of County Commissioners (BCC) through the staff. When a recommendation is forwarded from the CPC to the Board of County Commissioners (BCC), the Board may only accept new evidence if good cause is shown. If new evidence is submitted, it is possible that it will be remanded to the CPC for consideration if new evidence is presented to the Board that was not presented to the CPC. The Board will generally make their decision based solely on the evidence in the record at each CPC hearing. Attached is the Board's procedure for Appeals.

Es necesario traer un interprete si no habla ingles o puede llamar a Miriam Aguilar al 314-0369.

If you have any questions, please do not hesitate to contact me at 314-0385.

Sincerely,


Enrico Gradi
Community Development Manager

EG/fs

cc: File

Kevin Grovet, Public Work
Christi L. Tanner, Public Works
New Mexico Environment Law Center, 1405 Luisa St. #5, Santa Fe, NM 87505
Rodey Law Firm, John P. Salazar, P.O. Box 1888, Albuquerque, NM 87103
Western Albuquerque Land Holding LLC
6991 E. Camelback Road, Suite B297, Scottsdale, AZ 85251
Consensus Planning, 302 8th St NW, Albuquerque, NM 87102
Albuquerque Public Schools, Brad Winter, P.O. Box 25704, Albuquerque, NM 87125
Melinda Taber, USDOT/FAA,
Real Estate and Utilities Group, ASW-53, 2601 Meacham Blvd., FT. Worth, TX 76137
Carol and Gilbert Perez, 4621 Spring Valley SW, Albuquerque, NM 87105
Rudy and Angel Garcia, 1200 Don Francison PL. NW, Albuquerque, NM 87105
Charles W. Travelstem, 6100 Buffalo Grass Ct. NE, Albuquerque, NM 87111
Frank Sanchez, 609 Briar Rd., Bellingham, WA 98225
Ruben Marquez, 2927 Cubrul Tr. SW, Albuquerque, NM 87121
Claus Zahn, 9 Dama Rd., Los Lunas, NM 87031
Toan Luong, 1835 Shadow Leader SE, Albuquerque, NM 87123
James Thomas, 2641 San Mateo NE, Albuquerque, NM 87110
Lynette Gallegos, 8623 Bouvandie Ave. NW, Albuquerque, NM 87120
Gary Bernier, 3604 Silver Ave. SE, Albuquerque, NM 87109
Carlos Proffit, 5805 Coors Blvd. SW, Albuquerque, NM 87121
Alicia Kassa, 5609 Kimberlite Dr. NW, Albuquerque, NM 87120
Richard Austin, 8423 Mendocino, Dr. NE, Albuquerque, NM 87122
Rod Mahoney, 1838 Sadora Rd. SW, Albuquerque, NM 87105
Andrew Gingerich, MRCOG, 809 Copper Ave, NW, Albuquerque, NM 87102
Marisol Archuleta, 3615 Big Cottonwood Dr. SW, Albuquerque, NM 87105
Diane Reese, 1620 Bernard Thomas Lane SW, Albuquerque, NM 87105
Michael Reed, 2401 Black Mesa Loop SW, Albuquerque, NM 87105
Nathan Perez, 2250 Hyde Street, San Francisco, CA 94109
Zoe Economou, 214 Riverside Dr. SW, Albuquerque, NM 87105
Marcia Fernandez and Rip Anderson, 2401 Violet SW, Albuquerque, NM 87105
Senoria Garcia, 1923 Arenal Rd. SW, Albuquerque, NM 87105
Phillip Kleh, 803 Vassar Dr. SE, Albuquerque, NM 87106
Conrad Zahn, 9 Dama Rd., Los Lunas, NM 87031
Adam Rubinstein, 1431 ½ La Vega SW, Albuquerque, NM 87105
Jay Phelan, 545 Shirk Ln. SW, Albuquerque, NM 87105
Donald L. Hall, 9101 Lagrima de Orone NE, Albuquerque, NM 87111
Lauro Silva, 5005 5th St SW, Albuquerque, NM 87105
Pat McCraw, 3301-R Coors #296, Albuquerque, NM 87121
Jerome Padilla, 3408 Calle Facio NW, Albuquerque, NM 87104
Sara Juarez, 933 Nashville SW, Albuquerque, NM 87105
Roberto Roibal, 2233 Don Felipe Rd. SW, Albuquerque, NM 87105
Juan Reynosa, 211 10th St SW, Albuquerque, NM 87102
James Santiago Maestas, 5734 Evans Rd. SW, Albuquerque, NM 87105
Virginia Neochee, 1212 Montrose SW, Albuquerque, NM 87105
Jorge Garica, 1212 Montrose Pl. SW, Albuquerque, NM 87105
Joe Berumen, 11930 Central SW, Albuquerque, NM 87121
Renee Horvath, 5515 Palomino Dr. NE, Albuquerque, NM 87120
Pablo and Andrea Lopez, 1843 Five Points Rd. SW, Albuquerque, NM 87105

Peter Eschman, 1916 Conita Real Ave. SW, Albuquerque, NM 87105
Elaine Heband, 1513 Escalante SW, Albuquerque, NM 87104
Susan Elliott, 2231 Lakeview Rd. SW, Albuquerque, NM 87105
Julie Stephens, 4800 Congress NW, Albuquerque, NM 87114
Town of Atrisco Grant, Jerome Padilla, 2708 Rosendo Garcia SW, Atrisco, New Mexico 87105
Jerry Gallegos, 6013 Sunset Gardens SW, Albuquerque, NM 87121
Dave D. Meinke, 1826 Poplar Lane SW, Bldg #2, Albuquerque, NM 87105
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Tomasita Espinoza, P.O. Box 72465, Albuquerque, NM 87195
Sylvia Diaz-Donville, P.O. Box 7143, Albuquerque, NM 87194
Onesimus Al-Amin, 6135 Full Moon Ave. NW, Albuquerque, NM 87114
Sisto Abeyta, 2140 Margo Rd. SW, Albuquerque, NM 87105
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Bradley Conway, 2105 Gold Ave. SE, Albuquerque, NM 87106
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Pilar Trujillo, P.O. Box 1026, Chimayo, NM 87522
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Janelle Astorga, 1912 John St. SE, Albuquerque, NM 87102
Justice Irons, 2512 Los Padilla Rd. SW, Albuquerque, NM 87105
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Andres Lazo, 3220 Grasshopper Dr. SW, Albuquerque, NM 87121
Jacque Garcia, 7424 Euclid Ave. NE, Albuquerque, NM 87110
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Michelle Meaders, 4047 Anderson Ave. SE, Albuquerque, NM 87108
Jack L. and Margie Mortley, 2830 Rio Bravo SW, Albuquerque, NM 87105
John Garcia, 4100 Wolcott NE, #B, Albuquerque, NM 87109
Susan Selbin, 2431 Northwest Cir. NW, Albuquerque, NM 87104
Kyle Harwood, 1660 A Old Pecos Trail, Santa FE, 87505
Bea Aragon, 6021 Beck Road SW, Albuquerque, NM 87105
Paul Silverman/Erin Muffoetto, 115 Gold Ave. SW, #115, Albuquerque, NM 87102
James Topmiller, 7500 Jefferson NE, Albuquerque, NM 87109
Jeff Gavvett, 1130 Laves Eve NW, Albuquerque, NM 87114
Brad Lagorio, 2405 Meadow Rd. SW, Albuquerque, NM 87105
Candelaria Patterson, 7608 Elderwood NW, Albuquerque, NM 87120
Andres Romero, 7411 Isleta SW, Albuquerque, NM 87105
Laurel E. Drew, 1905 Gun Club Rd. SW, Albuquerque, NM 87105
Susanne Bronon, 300 Tulave Pl. NE, Albuquerque, NM 87106
Jean Merriman, 1816 Van Court SW, Albuquerque, NM 87105
Louis Head, 802 Headingly Ave. NW, Albuquerque, NM 87107
Emma Sandoval, 1128 18th St NW, Albuquerque, NM 87104
Juan Reynosa, 211 10th St. SW, Albuquerque, NM 87102
Senator Linda M. Lopez, 9132 Suncrest SW, Albuquerque, NM 87121

Kristine Suozzi, 1312 Bryn Mawr NE, Albuquerque, NM 87106
Jacque Garcia, 7424 Euclid Ave. NE, Albuquerque, NM 87110
Monica Trujillo, 561 Coronado Dr., Bernalillo, NM 87004
Maria Gallegos, 6939 Via del Cerro NE, Albuquerque, NM 87113
James Chavez, 2708 Rosendo Garica SW, Albuquerque, NM 87105
Dustin Chavez-Davis, 611 Leas Ave SW, #708, Albuquerque, NM 87102
Daniel Michel, 423 11th ST. SW, Albuquerque, NM 87102
Bradie Mitchell, 6517 Mesa Solana Pl. NW, Albuquerque, NM 87120
Adrian N. Carver, 433 Carlisle Blvd. NE, Albuquerque, NM 87106
Vicente Garcia, 370 Atrisco Ave. SW, Albuquerque, NM 87105
Loren Gomez, 2700 Rosendo Garcia SW, Albuquerque, NM 87105
Javier Benavidez, 1115 Barelaz SW, Albuquerque, NM 87102
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Paul Duran, 2409 Metzgar SW, Albuquerque, NM 87105
Isaac Benton, One Civic Plaza, Albuquerque, NM 87102
Alan Reed, 3105 Don Quixote Ct. NW, Albuquerque, NM 87104
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Rob Leutheuser, 1550 Yakima SW, Albuquerque, NM 87105
Roxanne Allen, 1004 Manzano Ct. NW, Albuquerque, NM 87102
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Carol Bennson, 1749 Miracerros Pl. NE, Albuquerque, NM 87106
Kelly O'Donnell, 1473 W Ella Dr. Corrales, NM 87048
Tomas Atencio Pacheco, 2128 Lakeview Rd. SW, Albuquerque, NM 87105
Janet Greenwald, 215 Hartline SW, Albuquerque, NM 87105
Marilyn Baner, 2109 Lakeview SW, Albuquerque, NM 87105
Sara Keeney, 1112 La Font Rd. SW, Albuquerque, NM 87105
Jimmy Petitt, 1321 Jeanette SW, Albuquerque, NM 87105
Marla Painter, 506 Valley High SW, Albuquerque, NM 87105
Eleanor Chavez, 1307 Del Mastro SW, Albuquerque, NM 87105
Monica Trujillo, 625 Silver Ave, NE, Albuquerque, NM 87102
Tatiana Ruiz, 620 Cordero Rd. NE, Albuquerque, NM 87102
Giselle Fierro, 2326 Felicitas SW, Albuquerque, NM 87105
Alfred Delgado, 5500 Valle Vista Rd. SW, Albuquerque, NM 87105
Sean-Paul VonAncken, 1609 Silver SE, Albuquerque, NM 87106
Tom Gevsz, 124 Edith Blvd. SE, Albuquerque, NM 87102
Andrea Serrano, 411 Bellamah Ave. NW, Albuquerque, NM 87102
John Varsa, 609 Encino Pl. NE, Albuquerque, NM 87102
Sally Bergen, 1908 Caayno de Compania NW, Albuquerque, NM 87107
Peter Hebard, 1513 Escalante Ave. SW, Albuquerque, NM 87104
Rita Daniels, 800 Alvarado Dr. SE, Albuquerque, NM 87108

Procedure of Appeals

Bernalillo County Board of County Commissioners

Procedure for Quasi-Judicial Hearings. The procedures to be followed for appeals are generally follows:

A. Appeal or Public Hearing Time Limits: A fifteen (15) minute time limit on each party's argument before the Commission may be established with the understanding that the Chair may alter the time limit when the case is unusually complex. Where numerous speakers sign up to present argument, the Chair may assign a time limit of two (2) minutes per speaker, but in any event, each party's argument shall not exceed the total time allowed. In all cases, the maximum time available for proponents should be equal to the maximum time allowed for the opponents. If necessary, a staff person shall be assigned by the County Manager to be the official timekeeper.

The order of presentation and time limits, as set forth in our Rules of Procedure, are as follows:

1. Staff presentation; 5 minutes
2. Appellant's presentation; 10 minutes
3. Opponent(s) presentation; 15 minutes
4. Appellant's summation or rebuttal; 5 minutes
5. Staff Closure; 2 minutes
6. Board discussion and questions
7. Action

Please be aware that the time limits for each side—appellants and opponents—is the total time allowed regardless of the number of persons signed up to speak. So each side will need to decide how to divide the total minutes among the speakers.

B. In order to focus the Board of County Commissioners on the issues the party is presenting on appeal, they are encouraged to cite to the facts in the record from the County Planning Commission, and present legal arguments based on the facts in the record. No new evidence shall be presented on appeal to the Board of County Commissioners except as provided in paragraph 22.J below.

C. The County Manager or designee shall describe the quasi-judicial item to be considered and make a presentation pertaining to the item. This presentation shall be limited to five (5) minutes. The Chair shall then inquire as to whether any Commissioner has questions for the staff members who made the presentation.

D. The zoning applicant, or appellant, or his/her representative will make a presentation pertaining to the application or appeal. This presentation shall be limited to ten (10) minutes. The Chair will once again

inquire as to whether Commissioners have questions of the applicant/appellant and the applicant's/appellant's representatives.

E. The opponents will make a presentation pertaining to the application or appeal. The presentation will be limited to fifteen (15) minutes. The Chair will once again inquire as to whether Commissioners have questions of the opponents or the opponent's representatives.

F. There will be an opportunity for applicant/appellant rebuttal and summation. This presentation shall be limited to five (5) minutes.

G. Staff will then be provided an opportunity to present closing comments. There shall be a time limit of two (2) minutes for closing comments.

H. The Chair will then inquire of the Commissioners as to whether they have further questions of staff, the applicant/appellant or the opponents and will recognize Commissioners who wish to question the parties or staff.

I. The Chair will then inquire of the Commissioners as to whether they are prepared to vote on the issue of the application/appeal before them.

J. No new evidence shall be presented by the applicant/appellant or the opponents. If a party shows good cause why new evidence is necessary for the Commission to act on the case and why the evidence was not available to be presented to the County Planning Commission, the Board of County Commissioners shall either:

i. Remand the case to the County Planning Commission to hear the new evidence and any rebuttal evidence, or;

ii. If the proposed new evidence is brief and concise in nature and will not prejudice the other party's opportunity to respond to it the Commission may allow the evidence to be presented and considered; swear any witness; allow the opposing party to rebut the new evidence, and; allow for brief cross examination on the new evidence presented through the Chair.

K. The Commission shall then take action on the item.



County of Bernalillo
State of New Mexico
Planning & Development Services
111 Union Square SE, Suite 100
Albuquerque, New Mexico 87102
(505) 314-0350
APPLICATION

SITE ADDRESS/LOCATION

0 NA, ****DO NOT EDIT****

PERMIT NO: ZCOA2015-0006

Printed: December 18, 2014

PROPERTY OWNER

WESTERN ALBUQ LAND HOLDINGS LL
PO BOX 56790
ALBUQUERQUE, NM 87187

UPC

100205525821640201

LEGAL DESCRIPTION

TR 210 ROW 1 UNIT B WEST OF
WESTLAND LESS POR OUT TO R/W CON
T 3.62 AC

AGENT

Fees Paid: \$100.00

Description: Appeal to CZ-20130009
Agent New Mexico Environmental Law Center
Appellant South West Organizing Project

**I HEREBY CERTIFY THAT I HAVE READ AND EXAMINED THIS DOCUMENT AND
KNOW THE SAME TO BE TRUE AND CORRECT. ALL PROVISIONS OF LAWS AND
ORDINANCES GOVERNING THIS TYPE OF WORK WILL BE COMPLIED WITH
WHETHER SPECIFIED HEREIN OR NOT. GRANTING OF A PERMIT DOES NOT
PRESUME TO GIVE AUTHORITY TO VIOLATE OR CANCEL THE PROVISIONS OF
ANY OTHER STATE OR LOCAL LAW REGULATING LAND USE.**

Signature:


(Applicant/Owner Or Authorized Agent)

12/18/14
Date

Approved By:


(ZBP Staff)

12/18/14
Date

BERNALILLO COUNTY

Planning & Development Services
111 Union Square SE, Suite 100
Albuquerque, NM 87102
(505) 314-0350 Fax: (505) 314-0480
www.bermco.gov



ZONING SECTION

APPEAL TO COUNTY COMMISSION

Application Date: _____
Application Number: 200A-2015-0006
Hearing Date: _____

*Amended
appeal
zone change*

| | | |
|---|-----------------------------|-----------------------------------|
| OWNER/ APPLICANT FOR LAND USE REQUEST Western Albuquerque Land Holdings | | PHONE 505-764-9801 |
| MAILING ADDRESS PO Box 56790 | CITY Albuquerque | ZIP 87187 |
| AGENT (FOR APPEAL) New Mexico Environmental Law Center | | PHONE 505-989-9022 |
| MAILING ADDRESS 1405 Luisa St #5 | CITY Santa Fe | ZIP 87505 |
| APPEAL South/West Organizing Project | | PHONE 505-247-8832 |
| MAILING ADDRESS 211 10th St SW | CITY Albuquerque | ZIP 87102 |
| SITE ADDRESS | | Case # CZ-20130009 |
| DIRECTIONS Bounded by Interstate 40 to north, 118th St. and escarpment to east, Pajarito Mesa on south and escarpment near Rio Puerco valley on west | | |
| LEGAL DESCRIPTION protected sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 & 17, T8N, R1E & sections 6, 7, 8, 16, 17 & 18, T8N, R2E, & sections 32, 33, 34, 35, & 36 T10N, R1E & sections 30 & 31, T8N, R2E, NMPM, Atraves, Rincón | | |
| ZONE MAP PAGE | CURRENT ZONE(S) A-1 | PROPERTY SIZE IN ACREAGE 13700 |
| UPC # | PROPOSED ZONE(S) PC Zone | SUBDIVISION NAME Santa Fe |

CASE # & SCOPE OF APPEAL

Amended Appeal - Bernalillo County Planning Commission decision on Santolina Zoning Change, see attachment

DETAILED INFORMATION

Please see attached amended appeal document

I hereby acknowledge that I have read this entire application and affirm that all of the provided information is correct. I agree to comply with the requirements of Bernalillo County and the State of New Mexico as outlined in all applicable laws, ordinances and regulations.

Douglas Meiklejohn Douglas Meiklejohn
Printed Name Signature

12/29/14
Date

Rev 09/14



BEFORE THE BERNALILLO COUNTY, NEW MEXICO

BOARD OF COUNTY COMMISSIONERS

SOUTHWEST ORGANIZING PROJECT,
NEW MEXICO HEALTH EQUITY WORKING
GROUP, and PAJARITO VILLAGE ASSOCIATION,

v.

FILE NO. CZ-20130009

BERNALILLO COUNTY PLANNING COMMISSION

AMENDED APPEAL OF THE
BERNALILLO COUNTY PLANNING COMMISSION DECISION
APPROVING AMENDMENT OF THE ZONE MAP
IN CONNECTION WITH
PROPOSED SANTOLINA PLANNED COMMUNITIES
LEVEL A MASTER PLAN

Introduction

This is an amended appeal of the Bernalillo County Planning Commission (“the Planning Commission”) decision approving a zone map amendment in connection with the proposed Santolina Planned Communities Master Plan and recommending to the Bernalillo County Board of County Commissioners that it approve the zone map amendment. This amended appeal is filed by the SouthWest Organizing Project, the New Mexico Health Equity Working Group, and the Pajarito Village Association (referred to collectively as “the Appellants”).

The Planning Commission’s decision approving the requested zone map change and recommending that the Bernalillo County Board of County Commissioners approve the zone map amendment (“the Planning Commission’s Decision”) was voted on by the Planning Commission on December 3, 2014. For that reason, the Appellants filed their original appeal by 12:00 noon on December 18, 2014. Since notice of the Planning

Commission's Decision was not issued until December 12, 2014, and because the notice of the Planning Commission's Decision stated that appeals from that Decision could be filed by 12:00 noon on December 29, 2014, the Appellants reserved the right to file this amended appeal by 12:00 noon on December 29, 2014, which is the first work day following the 15th day after the written notice of the Planning Commission's Decision. (The written notice was dated December 12, 2014, and the 15th day after that date is December 27th, a Saturday.)

In addition, the Appellants continue to reserve the right to address the Bernalillo County Board of County Commissioners concerning this appeal through their representatives and through their counsel at any hearing conducted by the Board of County Commissioners addressing the zone map amendment.

The Appellants request that the members of the Bernalillo County Board of County Commissioners reverse the Planning Commission's Decision approving the requested zone map amendment and rule that the requested zone map amendment is denied. This request is based on the following four reasons.

First, the applicant for the zone map amendment has not demonstrated that the existing zoning is inappropriate pursuant to Bernalillo County Resolution 116-86 ("Resolution 116-86").

Second, the zone map amendment does not comply with the requirement of Resolution 116-86 that a land use change not be in significant conflict with adopted elements of the Comprehensive Plan or other County Master Plans and amendments thereto.

Third, the zone map amendment would allow uses of the land involved for purposes that would be harmful for the community.

Fourth, the zone map amendment is not consistent with the health, safety, and general welfare of the county.

Alternatively, if the Board of County Commissioners upholds the Planning Commission's Decision to grant the requested zone change, the Board of County Commissioners should do so only subject to the conditions that are spelled out on pages 13 to 18 below.

I. The Board of County Commissioners should reverse the Planning Commission's Decision.

A. The applicant for the zone map amendment has not demonstrated that the current zoning is inappropriate.

Bernalillo County Resolution 116-86 provides that:

The applicant [for a zone map amendment] must demonstrate that the existing zoning is inappropriate because:

- (1) There was an error when the existing zone map pattern was created; or
- (2) Changed neighborhood or community conditions justify the land use change; or
- (3) A different use category is more advantageous to the community, as articulated in the Comprehensive Plan or other County Master Plan, even though (1) or (2) above do not apply.

Here, there has been no demonstration by the applicant for the zone map amendment that the existing zoning for the land in question is inappropriate. The applicant has neither shown that there was an error when the existing zone map was created nor demonstrated that changed neighborhood or community conditions justify the land use change. Moreover, the evidence in the record concerning the Santolina Master Plan indicates that the proposed new land use category would be less, not more, advantageous to the community for three reasons. First, there is not adequate water to serve a planned community in the area in question. Second, construction of a planned community on the sand dunes in that area would be harmful to the community. Third, a planned community

could not be developed in that area at no net expense to the governments of Bernalillo County and the City of Albuquerque.

1. There is not water available to serve a planned community in the area under consideration.

The information in the record indicates that there is not adequate water for the use of the land in question for a planned community. The July 21, 2014 letter to Joe Chavez of the County Planning Commission from Stephen Glass cites a presentation made in July, 2014 by Bruce Thomson to the effect that water resources in the Middle Rio Grande are over-allocated by approximately 40 acre-feet per year. *See* Attachment 22 to the Planning Staff's Report. The absence of additional water supplies in the region is also attested to by the policy adopted by the Albuquerque/Bernalillo County Water Authority ("the Water Authority") to the effect that any new development that is outside of the Water Authority's service area (such as the proposed Santolina development) must provide its own water rights or funds with which to purchase water rights. (The Water Authority's Water Resources Management Strategy is contained in Attachment 22 to the Bernalillo County Planning Commission's staff's report ["the Planning Staff's Report"].)

Moreover, the Planning Staff's Report itself indicates that there are problems with the availability of water for the proposed development. At page 22 of the Planning Staff's Report, the staff commented that the Santolina Master Plan should provide more information about water availability. On page 23 of that Report, the staff stated that the water plan submitted in the Santolina Master Plan is "conceptual". On page 24 of its Report, the staff stated that more detailed information is needed in several areas, including the Environment and Open Space category, which includes availability of water and water

rights. Finally, on page 27 of its Report, the staff stated that the Water Authority had commented that “water or service is not currently available to the subject property”

2. Construction of a planned community on the sand dunes in the area in question would cause adverse impacts to the community.

The evidence before the County Planning Commission demonstrates that the soil in much of the area for which the zoning map amendment is sought consists of erodible sand dunes. This was noted in several comments submitted to the County Planning Commission. Paul Lusk raised this issue in his letter dated September 22, 2014 that is provided in Attachment 27 to the Planning Staff Report. It was also raised by Laura Gleason in the information that she provided as part of Attachment 26 to the Planning Staff Report; that information includes maps of areas of blowing sand in the La Mesita Negra SE Quadrangle in Bernalillo county. And it was raised by the letter from Jacque Garcia of Bernalillo County Place Matters to Joe Chavez, Chair of the Bernalillo County Planning Commission that is included in Attachment 20 to the Planning Staff Report.

The adverse health impacts that could result from such blowing sand were pointed out by the Health Impact Assessment conducted by Bernalillo County Place Matters. That Assessment, which is included in Attachment 27 to the Planning Staff Report, stated:

Sand dunes – Site development impacts to the fragile desert ecosystem, consisting of large lateral expanses of sand dunes, and the potential for erosion on high wind days to contribute to air pollution, asthma and lower and upper respiratory illness.

...

The development is likely to impact the ancient sand dunes covering the proposed site. The impact is likely to cause short-term soil disturbance and long-term air quality issues resulting from the erosion of sand dunes in high wind events. The particles caught up in the wind have serious health impacts.

Construction of a planned community at the proposed Santolina development site therefore would adversely affect the community. For that reason, the zone map amendment that would allow such construction is not appropriate.

3. A planned community the size of the proposed Santolina development would likely result in net expenses to Bernalillo County and the City of Albuquerque.

The most realistic analysis of the fiscal and economic impacts of a planned community the size of the proposed Santolina development was conducted by Ph.D. economist Kelly O'Donnell, who is a former Deputy Cabinet Secretary of the New Mexico Economic Development Department, a past Chair of the New Mexico Spaceport Authority, and a former Superintendent of the New Mexico Regulation and Licensing Department. In her analysis, which is included in Attachment 30 to the Planning Staff Report, Dr. O'Donnell pointed out the flaws in the Santolina Master Plan assertion that the Santolina development could be completed without net expense to the Bernalillo County and City of Albuquerque governments.

First, Dr. O'Donnell stated that the Santolina Master Plan incorrectly assumed high rates of population growth and job creation in western Bernalillo county during the next 20-50 years. In fact, however, New Mexico's working population is shrinking in large part because the economy here cannot sustain enough good jobs to keep working people here. The University of New Mexico Bureau of Business and Economic Research predicts that by the year 2030 about half of the New Mexico population will be either over 65 or under 18.

Second, based primarily on its assumption that there will be strong population growth, the Santolina Master Plan predicts that 25,000 new jobs will be created by businesses at Santolina by the year 2035, and 75,000 new jobs will be created there during

the next 40 to 50 years. These figures are seriously at odds with the projections of the Bureau of Business and Economic Research and the Mid Region Council of Governments, which predict that only about 7,700 new jobs will be created in the area that includes Santolina by the year 2035. Moreover, the Albuquerque MSA's economic weaknesses are systemic, which indicates that further population declines and anemic job growth are likely. The State Economic Development Department projects that Bernalillo county's population growth rate will continue to decline, and that the county's rate of growth may be only about 0.8% from 2035 to 2040.

Third, an analysis of the 2013 census data for western Bernalillo county indicates that two thirds of the people who moved there did so from other locations within the county. And, the majority of the remaining one third of those people moved to the west side of Bernalillo county from counties surrounding Bernalillo county. This means that only about 20% of the people who would move to Santolina would do so from areas other than the middle Rio Grande Valley.

These realistic projections indicate that the projections for the tax revenue that would be created by the Santolina development are unrealistically high. Moreover, the Santolina Master Plan understates the costs that would be incurred by Bernalillo County for the development. The Master Plan's estimates of County costs do not include any expenditures for new infrastructure, infrastructure maintenance, or open space acquisition, even though the Master Plan appears to assume that the County would acquire, develop, and maintain open space for the development. Even more importantly, the Master Plan does not consider the costs that will be incurred for transportation and water.

In addition, although growth at Santolina caused by movement of population from within Albuquerque to the development would benefit Bernalillo County's tax

base, such growth would reduce tax revenues for the City of Albuquerque. Finally, growth at Santolina would increase concerns within the region about the availability and cost of water, which has become a serious issue for businesses that are considering whether to relocate to different areas.

4. The Planning Commission's Decision does not adequately address any of these issues.

Nothing in the Planning Commission's Decision provides any analysis or other basis for a determination that the zone change is consistent with Resolution 116-86. On the contrary, the Decision merely alleges that the existing zoning is inappropriate and that the Santolina Master Plan complies with applicable requirements. The Decision states:

7. The request for Level A Planned Community Zoning for Santolina is consistent with Resolution 116-86 for the following reasons:
 - a. The request is consistent with the goals and plans in the approved Santolina Level A Master Plan, as well as policies in the Albuquerque/Bernalillo County Comprehensive Plan for master planned communities;
 - b. The request has demonstrated that the existing zoning on the property (primarily A-1 zoning) is no longer appropriate and the proposed development is more advantageous to the community by furthering and implementing the goals and plans articulated in the approved Santolina Level A Master Plan, as well as the Planned Communities Criteria and the Albuquerque/Bernalillo County Comprehensive Plan for master planned communities.

These allegations are merely conclusory statements without any analysis or other basis to support them. At no point does the Planning Commission's Decision address any of the issues that have been raised by the Appellants in their amended appeal of the Santolina Master Plan ("the Santolina Master Plan Amended Appeal") (a copy of which is attached and incorporated by reference). Moreover, as is spelled out below, the Planning

Commission's assertion that the Santolina Master Plan and the zone change comply with applicable Bernalillo County Plans is not accurate.

- B. The zone map amendment is not consistent with requirements of governing Bernalillo County Plans.

Resolution 116-86 also requires that a proposed change in land use not be in conflict with applicable elements of Bernalillo County Plans. It provides:

- C. A proposed land use change shall not be in significant conflict with adopted elements of the Comprehensive Plan or other County Master Plans and amendments thereto including privately developed area plans which have been adopted by the County.

The zone map amendment at issue does not comply with this requirement.

The zone map amendment would change the zoning in the area in question from an A-1 Rural Agricultural Zone to a Planned Communities Zone. The planned community for which this zone map amendment is sought is the proposed Santolina development, and the outlines of that planned community were presented in the Santolina Master Plan. As the Appellants have demonstrated in their amended appeal of the Bernalillo County Planning Commission recommendation that the Bernalillo County Board of County Commissioners approve the Santolina Master Plan, that Master Plan does not comply with five requirements of applicable Bernalillo County Plans.

First, the Santolina Master Plan does not comply with the requirements of the Bernalillo County Planned Community Criteria ("the Planned Community Criteria") that a developer provide documentation of physical and legal water availability. Second, the Santolina Master Plan does not provide an adequate transportation plan for the proposed development. Third, there is no showing in the Santolina Master Plan that the development will support schools needed for the population of the proposed development. Fourth, the Santolina Master Plan has not adequately taken into account the impacts that would result

from construction of the proposed development on the sand dunes that exist in the area where the development is proposed. Fifth, the most realistic analysis of the economics of the proposed development indicates that it cannot be constructed at no net expense to the governments of Bernalillo County and the City of Albuquerque.

The failure of the Santolina Master Plan to meet these requirements demonstrates that the zone map amendment is not appropriate. This is not a zone map amendment that should be considered in the abstract; it is a zone map amendment for the specific purpose of facilitating the proposed Santolina development. Because that proposed development's Master Plan does not comply with applicable Bernalillo County requirements, the zone map amendment that is tied to that proposed development should not be approved.

C. The zone map amendment would adversely affect the community.

As is noted above, the Planning Commission's Decision asserts without support that the zone change is advantageous to the community. There is no merit to that unsupported allegation.

First, there is no water in the region for the proposed Santolina development to use. For that reason, use of water for that proposed development would necessarily mean reduction in the amount of water that is available for other purposes. Particularly because of the size of the proposed development, that reduction in available water would adversely affect one or more sectors of the existing community.

Second, the construction of the proposed Santolina development on the sandy soils where it is proposed to be built would adversely affect the community. As was pointed out above, disturbance of those soils would probably result in erosion and airborne particulates that have the potential to cause air pollution and health problems, including asthma and upper and lower respiratory illness.

Third, the proposed Santolina development cannot be built without net expense to Bernalillo County and the City of Albuquerque. This was demonstrated by the analysis conducted by Kelly O'Donnell, who concluded that the Santolina Master Plan's assertion that no net expense would result from the proposed development was based on unrealistic assumptions. And, any net expense that would result from the proposed Santolina development would have to be borne by other sectors of the community, either in the form of higher taxes or in the form of reduced services.

- D. The zone map amendment is not consistent with the health, safety, and general welfare of the county.

Finally, Resolution 116-86 also requires that any zone change be consistent with the health, safety, and general welfare of the residents of Bernalillo county. The Planning Commission's Decision purports to address this requirement by another unsupported allegation. The Decision states only that:

The request [for the zone change] is consistent with the health, safety, and general welfare of the residents of Bernalillo County.

In fact, however, the zone map amendment is not consistent with the health, safety, and general welfare of Bernalillo county because the development that would be permitted by the amendment would have adverse effects on the county. The first of these adverse effects would be the development's use of a very large amount of water that is not available in the county. The only way that this amount of water can be available from the county is if it is taken from sectors of the county community that are using the water, and those sectors would be adversely affected if they lose their water.

As an example, if water is taken from surface water sources in the South Valley, the entities that will be harmed will be the South Valley acequias. If water is taken from the ground water aquifer in the South Valley, the many residents of

that area who rely on wells will be adversely affected. In short, if the development's need for water is addressed by taking water from elsewhere in the county, some other sector of the county community will be impacted adversely.

Moreover, as was pointed out in the Bernalillo County Place Matters Report that is part of Attachment 27 to the Planning Staff's Report, water shortages cause health problems:

Water is not only important to the cultural and farming traditions of acequia users, but to our local residents as well. The availability of fresh, local produce generated through our local agriculture sector not only helps farmers, but also improves nutritionally based health outcomes such as obesity and diabetes. Healthy eating and regular physical activity can lower blood pressure and prevent a range of chronic diseases. ... Most importantly, the availability of water is essential to the wellbeing, and life, of current residents.

The second adverse impact that construction of the proposed Santolina development would cause is the impact on health resulting from construction of such a large development on sandy soils. The hazards to health that can result from large scale construction in such soils were outlined above and in the Bernalillo County Place Matters report that is part of the record. *See* Attachment 27 to the Planning Staff's Report. And because the proposed Santolina development would be built out over a period of 40-50 years, the hazards to health resulting from construction at the development would not be a phenomenon of short duration.

The third adverse impact on Bernalillo county that would result from the proposed Santolina development that the zone map amendment would authorize is an impact on the Bernalillo county economy that would result from the costs that would have to be incurred for the purpose of building schools for children living in the development. According to an October 24, 2013 email from Martin Eckert of the Albuquerque Public Schools to Enrico

Gradi and others (which is part of Attachment 4 to the Planning Staff Report), all costs of schools for the development would have to be borne by taxpayers. Moreover, the Planning Staff Report concludes that the cost to taxpayers of the schools needed for the development (without considering the cost of the land required) would be \$654 million in today's dollars. Those costs would have a serious adverse effect on the county's general welfare.

The fourth adverse impact that the zone map amendment would have on the health, safety, and general welfare of the county is another fiscal impact that would result from the development that the zone map amendment is designed to authorize. As was pointed out earlier, that development probably could not be constructed at no net expense to the governments of Bernalillo County and the City of Albuquerque. As a result, construction of the development would cause one of two results. Either City and County revenues would have to be increased, probably through raises in taxes, or government services would have to be reduced. Either of those results would be contrary to the general welfare of the county.

- II. If the Board of County Commissioners approves the zone change, the Board of County Commissioners should require the developer to comply with the following conditions to address the problems raised by the zone change and the Santolina Master Plan.

As is explained above, the proposed zone map amendment does not comply with the requirements of Bernalillo County Resolution 116-86 for zone changes. For that reason, if the Board of County Commissioners upholds the Planning Commission's Decision authorizing the zone map amendment, the Board of County Commissioners should do so only if the Santolina developer complies with the conditions specified below. Moreover, in order to protect the rights of individuals and organizations concerned about the zone map amendment, the Board of County Commissioners should require that any

demonstration made by the developer concerning any of the conditions below be provided to all of the individuals and organizations listed on the service list for the Planning Commission's Decision dated December 12, 2014. Furthermore, in order to give the individuals and organizations on that list an opportunity to analyze and prepare responses to any demonstration made by the developer, the Board of County Commissioners should require that each demonstration be provided to those individuals and organizations at least six months prior to the submission of any further planning documents for the zone map amendment or the proposed Santolina Master Plan.

- A. Approval should be contingent on the Santolina development making the required demonstration as to availability of physical water and water rights and on that demonstration showing that the development would not impair existing users' water rights.

For the reasons outlined above and more fully explained in the attached Santolina Master Plan Amended Appeal, the Santolina Master Plan does not comply with the Planned Communities Criteria requirement that a developer demonstrate the availability of physical water and water rights. Because the Master Plan does not make that showing, it is not clear what the source or sources would be for water for the proposed development. For that reason, and in order to protect existing uses of water in Bernalillo county, the Board of County Commissioners should condition approval of the Santolina zoning change on the following conditions concerning water for the proposed development.

First, the developer of the proposed Santolina development should be required to demonstrate the availability of physical water and legal water rights and provide. Second, any demonstration of the availability of physical water should be based on one or more studies by reputable hydrologists or engineers licensed to practice in New Mexico

explaining what the source or sources of the physical water would be and the period of time during which the water would be available.

Third, any demonstration of the availability of legal water rights should be based on a determination by the New Mexico State Engineer indicating that the developer of the proposed Santolina development has the legal right to use the water in question and that either: 1) the time period for protests concerning those water rights has expired or 2) any protests concerning those water rights, including appeals of rulings on any such protests, have been resolved in the developer's favor.

Fourth, any demonstration of the availability of either physical water or legal water rights should show that the use of water by the proposed development would not impair the use of water by any existing water user in Bernalillo county.

- B. Approval of the zoning change should be conditioned on agreement by the Planning Commission and the New Mexico Department of Transportation to the proposed Santolina development's transportation plans.

As was explained fully in the attached Santolina Master Plan Amended Appeal, both the County Planning staff and the New Mexico Department of Transportation commented on deficiencies in the Santolina Master Plan's information concerning transportation. First, the transportation plan should address the problems noted by the New Mexico Department of Transportation. These include: 1) the lack of adequate information about the internal road system, which should be a grid system and which should tie into the wider transportation system; 2) the inappropriate proposal to have two major roads go through the urban center; and 3) the need to follow State road requirements in the development, particularly at interchanges with State roads, including the interchange at Shelley Road.

Second, the proposed transportation plan should eliminate the current proposal for major arterials to go through Major Public Open Space. Third, the proposed transportation plan should include provisions for the roads on the west side of the proposed development to be in compliance with the Metropolitan Transportation Plan.

Finally, the developer of the proposed Santolina development should be required to demonstrate that the transportation system for the proposed development will be constructed at no cost to either Bernalillo County or the City of Albuquerque.

- C. The developer of the proposed Santolina development should be required to demonstrate that the development would neither cause the APS District to spend additional funds nor add students to existing schools in the APS District.

The proposed Santolina development would be within the APS District, but as was pointed out in the attached Santolina Master Plan Amended Appeal, the Santolina Master Plan provides only general information about the schools that would be required for the development. For that reason, it is not clear whether students from the development would attend existing schools within the District or whether new schools would be constructed for those students. However, many of those existing schools are already overcrowded, and it therefore would be inappropriate to add students to those schools. Moreover, the cost of new schools for the proposed development would have to be paid by taxpayers, and the Planning Commission staff estimated the cost of the schools needed for the development would be \$654 million in today's dollars even without considering the cost of the land required.

For these reasons, if the Board of County Commissioners approves the Santolina zone change, the Board of County Commissioners should require that the developer demonstrate that the proposed development would not add students to APS District schools

and that the cost of schools for students from the proposed development would be covered by the proposed development and not by taxpayers in Albuquerque or Bernalillo county.

- D. Approval of the Santolina Master Plan should be conditioned on monitoring of air emissions from construction to ensure that the sand-based land does not cause health problems.

The proposed Santolina development would be constructed on sand based land. As explained in the Bernalillo County Place Matters Health Impact Assessment, the blowing sand that would result from construction of the proposed development could cause serious health problems. For that reason, the proposed development should be allowed to proceed only if it is accompanied by air monitors to measure dust from the construction. Those air monitors should be designed and placed subject to the approval of the Bernalillo County Place Matters team that conducted the Health Impact Assessment.

Moreover, this condition should include measures to ensure that construction is either ceased or altered if the monitor readings demonstrate that the levels of dust and other particulates caused by the construction are dangerous to human health.

- E. The Santolina Master Plan should not be approved unless an objective and realistic analysis demonstrates that the development would not result in any net cost to either Bernalillo County or Albuquerque.

The analysis conducted by Kelly O'Donnell demonstrated the flaws in the Santolina Master Plan's assertion that the proposed development would not result in a net cost to either Bernalillo County or the City of Albuquerque. Those flaws include incorrect assumptions about population growth and job creation in western Bernalillo county during the next 25-50 years, inaccurate data about where people moving to the proposed Santolina development are likely to move from, inappropriate estimates about the fiscal impact of the proposed development on Bernalillo County, and failure to consider the effect on the City of Albuquerque of people moving out of the City to the proposed development. For these

reasons, the Santolina Master Plan's assertion that the development would not result in a net cost to local government is not credible.

Because of this failure of the Santolina Master Plan to conduct a realistic analysis of the net cost of the proposed development, the Board of County Commissioners should condition any approval of the Santolina Master Plan on the conduct of a new analysis of the proposed development's net cost to local government. Moreover, the Board of County Commissioners should require that the analysis be conducted by an impartial third party such as the Bureau of Business and Economic Research.

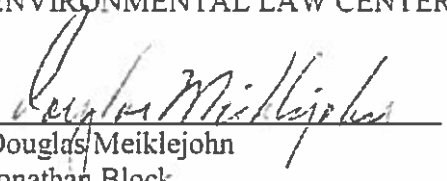
Conclusion

The zone map amendment violates several of the requirements for zone changes of Bernalillo County Resolution 116-86. The Bernalillo County Board of County Commissioners should reverse the Planning Commission Decision approving the zone map amendment, and should rule that the zone map amendment cannot stand.

Alternatively, if the Board of County Commissioners does approve the zone change, the Board of County Commissioners should require that the developer comply with the conditions outlined above.

Dated: December 29, 2014.

NEW MEXICO
ENVIRONMENTAL LAW CENTER



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Certificate of Service

I certify that on December 29, 2014 copies of this Amended Appeal were mailed to:

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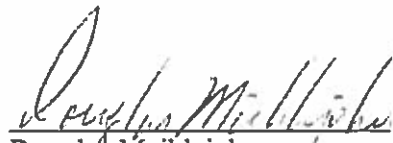
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ZONING SECTION

APPEAL TO COUNTY COMMISSION

Application Date: _____

Application Number: _____

Hearing Date: _____

12/18/14
ZCoA 2015-0004
Feb. 19, 2015

Original
appeal justification
Zone change

| | | |
|---|-----------------------------|-----------------------------------|
| OWNER/ APPLICANT FOR LAND USE REQUEST Western Albuquerque Land Holdings | | PHONE 505-764-9801 |
| MAILING ADDRESS PO Box 56790 | CITY Albuquerque | ZIP 87187 |
| AGENT (FOR APPELLANT) New Mexico Environmental Law Center | | PHONE 505-989-9022 |
| MAILING ADDRESS 1405 Luisa St #5 | CITY Santa Fe | ZIP 87505 |
| APPELLANT SouthWest Organizing Project | | PHONE 505-247-8832 |
| MAILING ADDRESS 211 10th St SW | CITY Albuquerque | ZIP 87102 |
| SITE ADDRESS | | Case # CZ-20130009 |
| DIRECTIONS Bounded by Interstate 40 to north, 112th St. and escarpment to east. Pajarito Mesa on south and escarpment near Rio Puerco valley on west | | |
| LEGAL DESCRIPTION projected sections 1, 2, 3, 4, 5, 6, 10, 11, 12, 13, 14, 15, 16 & 17, T24N, R1E & sections 4, 7 & 13, 17 & 18, T24N, R2E & sections 32, 33, 34, 35, & 36 T12N, R1E & sections 20 & 21, T8N, R2E, NMPMA, Arisco, Bernalillo | | |
| ZONE MAP PAGE | CURRENT ZONE(S) A-1 | PROPERTY SIZE IN ACREAGE 13700 |
| UPC # | PROPOSED ZONE(S) PC Zone | SUBDIVISION NAME Santolina |

CASE # & SCOPE OF APPEAL

Appeal Bernalillo County Planning Commission decision on Santolina Zoning Change, see attached appeal

DETAILED INFORMATION

Please see attached appeal document

I hereby acknowledge that I have read this entire application and affirm that all of the provided information is correct. I agree to comply with the requirements of Bernalillo County and the State of New Mexico as outlined in all applicable laws, ordinances and regulations.

Douglas McIlhenny Douglas McIlhenny
Printed Name Signature

12/18/14
Date

Rev. 07/14

BEFORE THE BERNALILLO COUNTY, NEW MEXICO
BOARD OF COUNTY COMMISSIONERS

SOUTHWEST ORGANIZING PROJECT,
NEW MEXICO HEALTH EQUITY WORKING
GROUP, and PAJARITO VILLAGE ASSOCIATION,

v.

FILE NO. CZ-20130009

BERNALILLO COUNTY PLANNING COMMISSION

APPEAL OF THE
BERNALILLO COUNTY PLANNING COMMISSION DECISION
APPROVING AMENDMENT OF THE ZONE MAP
IN CONNECTION WITH
PROPOSED SANTOLINA PLANNED COMMUNITIES
LEVEL A MASTER PLAN

Introduction

This is an appeal of the Bernalillo County Planning Commission ("the Planning Commission") decision approving a zone map amendment in connection with the proposed Santolina Planned Communities Level A Master Plan and recommending to the Bernalillo County Board of County Commissioners that it approve the zone map amendment. This appeal is filed by the SouthWest Organizing Project, the New Mexico Health Equity Working Group, and the Pajarito Village Association (referred to collectively as "the Appellants".)

The Planning Commission's decision approving the requested zone map change and recommending that the Bernalillo County Board of County Commissioners approve the zone map amendment ("the Planning Commission's Decision") was voted on by the Planning Commission on December 3, 2014. For that reason, this appeal is being filed by 12:00 noon on December 18, 2014. Since notice of the Planning Commission's Decision was not issued until December 12, 2014, the Appellants reserve the right to amend this

Appeal by 12:00 noon on December 29, 2014, which is the first work day following the 15th day after the written notice of the Planning Commission's Decision. (The written notice was dated December 12, 2014, and the 15th day after that date is December 27th, a Saturday.)

In addition, the Appellants reserve the right to address the Bernalillo County Board of County Commissioners concerning this appeal through their representatives and through their counsel at any hearing conducted by the Board of County Commissioners addressing the zone map amendment.

The Appellants request that the members of the Bernalillo County Board of County Commissioners reverse the Planning Commission's Decision approving the requested zone map amendment and rule that the requested zone map amendment is denied. This request is based on the following four reasons.

First, the applicant for the zone map amendment has not demonstrated that the existing zoning is inappropriate pursuant to Bernalillo County Resolution 116-86 ("Resolution 116-86").

Second, the zone map amendment does not comply with requirement of Resolution 116-86 that a land use change not be in significant conflict with adopted elements of the Comprehensive Plan or other County Master Plans and amendments thereto.

Third, the zone map amendment would allow uses of the land involved for purposes that would be harmful for the community.

Fourth, the zone map amendment is not consistent with the health, safety, and general welfare of the county.

- I. The applicant for the zone map amendment has not demonstrated that the current zoning is inappropriate.

Bernalillo County Resolution 116-86 provides that:

The applicant [for a zone map amendment] must demonstrate that the existing zoning is inappropriate because:

- (1) There was an error when the existing zone map pattern was created; or
- (2) Changed neighborhood or community conditions justify the land use change; or
- (3) A different use category is more advantageous to the community, as articulated in the Comprehensive Plan or other County Master Plan, even though (1) or (2) above do not apply.

Here, there has been no demonstration by the applicant for the zone map amendment that the existing zoning for the land in question is inappropriate. The applicant has neither shown that there was an error when the existing zone map was created nor demonstrated that changed neighborhood or community conditions justify the land use change. Moreover, the evidence in the record concerning the Santolina Master Plan indicates that the proposed new land use category would be less, not more, advantageous to the community for three reasons. First, there is not adequate water to serve a planned community in the area in question. Second, construction of a planned community on the sand dunes in that area would be harmful to the community. Third, a planned community could not be developed in that area at no net expense to the governments of Bernalillo County and the City of Albuquerque.

- A. There is not water available to serve a planned community in the area under consideration.

The information in the record indicates that there is not adequate water for the use of the land in question for a planned community. The July 21, 2014 letter to Joe Chavez of the County Planning Commission from Stephen Glass cites a presentation made in July, 2014 by Bruce Thomson to the effect that water resources in the Middle Rio Grande are

over-allocated by approximately 40 acre-feet per year. *See* Attachment 22 to the Planning Staff's Report. The absence of additional water supplies in the region is also attested to by the policy adopted by the Albuquerque/Bernalillo County Water Authority ("the Water Authority") to the effect that any new development that is outside of the Water Authority's service area (such as the proposed Santolina development) must provide its own water rights or funds with which to purchase water rights. (The Water Authority's Water Resources Management Strategy is contained in Attachment 22 to the Bernalillo County Planning Commission's staff's report ["the Planning Staff's Report"].)

Moreover, the Planning Staff's Report itself indicates that there are problems with the availability of water for the proposed development. At page 22 of the Planning Staff's Report, the staff commented that the Santolina Master Plan should provide more information about water availability. On page 23 of that Report, the staff stated that the water plan submitted in the Santolina Master Plan is "conceptual". On page 24 of its Report, the staff stated that more detailed information is needed in several areas, including the Environment and Open Space category, which includes availability of water and water rights. Finally, on page 27 of its Report, the staff stated that the Water Authority had commented that "water or service is not currently available to the subject property"

- B. Construction of a planned community on the sand dunes in the area in question would cause adverse impacts to the community.

The evidence before the County Planning Commission demonstrates that the soil in much of the area for which the zoning map amendment is sought consists of erodible sand dunes. This was noted in several comments submitted to the County Planning Commission. Paul Lusk raised this issue in his letter dated September 22, 2014 that is provided in Attachment 27 to the Planning Staff Report. It was also raised by Laura

Gleason in the information that she provided as part of Attachment 26 to the Planning Staff Report; that information includes maps of areas of blowing sand in the La Mesita Negra SE Quadrangle in Bernalillo county. And it was raised by the letter from Jacque Garcia of Bernalillo County Place Matters to Joe Chavez, Chair of the Bernalillo County Planning Commission that is included in Attachment 20 to the Planning Staff Report.

The adverse health impacts that could result from such blowing sand were pointed out by the Health Impact Assessment conducted by Bernalillo County Place Matters. That Assessment, which is included in Attachment 27 to the Planning Staff Report, stated:

Sand dunes – Site development impacts to the fragile desert ecosystem, consisting of large lateral expanses of sand dunes, and the potential for erosion on high wind days to contribute to air pollution, asthma and lower and upper respiratory illness.

...

The development is likely to impact the ancient sand dunes covering the proposed site. The impact is likely to cause short-term soil disturbance and long-term air quality issues resulting from the erosion of sand dunes in high wind events. The particles caught up in the wind have serious health impacts.

Construction of a planned community at the proposed Santolina development site therefore would adversely affect the community. For that reason, the zone map amendment that would allow such construction is not appropriate.

- C. A planned community the size of the proposed Santolina development would likely result in net expenses to Bernalillo County and the City of Albuquerque.

The most realistic analysis of the fiscal and economic impacts of a planned community the size of the proposed Santolina development was conducted by Ph.D. economist Kelly O'Donnell, who is a former Deputy Cabinet Secretary of the New Mexico Economic Development Department, a past Chair of the New Mexico Spaceport Authority, and a former Superintendent of the New Mexico Regulation and Licensing Department. In

her analysis, which is included in Attachment 30 to the Planning Staff Report, Ms.

O'Donnell pointed out the flaws in the Santolina Master Plan assertion that the Santolina development could be completed without net expense to the Bernalillo County and City of Albuquerque governments.

First, Ms. O'Donnell stated that the Santolina Master Plan incorrectly assumed high rates of population growth and job creation in western Bernalillo county during the next 20-50 years. In fact, however, New Mexico's working population is shrinking in large part because the economy here cannot sustain enough good jobs to keep working people here. In addition, the state's working population is shrinking; the University of New Mexico Bureau of Business and Economic Research predicts that by the year 2030 about half of the New Mexico population will be either over 65 or under 18.

Second, based primarily on its assumption that there will be strong population growth, the Santolina Master Plan predicts that 25,000 new jobs will be created by businesses at Santolina by the year 2035, and 75,000 new jobs will be created there during the next 40 to 50 years. These figures are seriously at odds with the projections of the Bureau of Business and Economic Research and the Mid Region Council of Governments, which predict that only about 7,700 new jobs will be created in the area that includes Santolina by the year 2035. Moreover, the Albuquerque MSA's economic weaknesses are system, which indicates that further population declines and anemic job growth are likely. The State Economic Development Department projects that Bernalillo county's population growth rate will continue to decline, and that the county's rate of growth may be only about 0.8% from 2035 to 2040.

Third, an analysis of the 2013 census data for western Bernalillo county indicates that two thirds of the people who moved there did so from other locations within the

county. And, the majority of the remaining one third of those people moved to the west side of Bernalillo county from counties surrounding Bernalillo county. This means that only about 20% of the people who would move to Santolina would do so from areas other than the middle Rio Grande Valley.

These realistic projections indicate that the projections for the tax revenue that would be created by the Santolina development are unrealistically high. Moreover, the Santolina Master Plan understates the costs that would be incurred by Bernalillo County for the development. The Master Plan's estimates of County costs do not include any expenditures for new infrastructure, infrastructure maintenance, or open space acquisition, even though the Master Plan appears to assume that the County would acquire, develop, and maintain open space for the development. Even more importantly, the Master Plan does not consider the costs that will be incurred for transportation and water.

In addition, although growth at Santolina caused by movement of population from within Albuquerque to the development would benefit Bernalillo County's tax base, such growth would reduce tax revenues for the City of Albuquerque. Finally, growth at Santolina would increase concerns within the region about the availability and cost of water, which has become a serious issue for businesses that are considering whether to relocate to different areas.

II. The zone map amendment is not consistent with requirements of governing Bernalillo County Plans.

Resolution 116-86 also requires that a proposed change in land use not be in conflict with applicable elements of Bernalillo County Plans. It provides:

C. A proposed land use change shall not be in significant conflict with adopted elements of the Comprehensive Plan or other County Master Plans and amendments thereto including privately developed area plans which have been adopted by the County.

The zone map amendment at issue does not comply with this requirement.

The zone map amendment would change the zoning in the area in question from an A-1 Rural Agricultural zone to a Planned Communities Zone. The planned community for which this zone map amendment is sought is the proposed Santolina development, and the outlines of that planned community were presented in the Santolina Master Plan. As the Appellants have demonstrated in their appeal of the Bernalillo County Planning Commission recommendation that the Bernalillo County Board of County Commissioners approve the Santolina Master Plan ("the Santolina Master Plan Appeal") (a copy of which is attached and which is incorporated by reference), that Master Plan does not comply with five requirements of applicable Bernalillo County Plans.

First, the Santolina Master Plan does not comply with the requirements of the Bernalillo County Planned Community Criteria ("the Planned Community Criteria") that a developer provide documentation of physical and legal water availability. Second, the Santolina Master Plan does not provide an adequate transportation plan for the proposed development. Third, there is no showing in the Santolina Master Plan that the development will support schools needed for the population of the proposed development. Fourth, the Santolina Master Plan has not adequately taken into account the impacts that would result from construction of the proposed development on the sand dunes that exist in the area where the development is proposed. Fifth, the most realistic analysis of the economics of the proposed development indicates that it cannot be constructed at no net expense to the governments of Bernalillo County and the City of Albuquerque.

The failure of the Santolina Master Plan to meet these requirements demonstrates that the zone map amendment is not appropriate. This is not a zone map amendment that

should be considered in the abstract; it is a zone map amendment for the specific purpose of facilitating the proposed Santolina development. Because that proposed development's Master Plan does not comply with applicable Bernalillo County requirements, the zone map amendment that is tied to that proposed development should not be approved.

III. The zone map amendment would adversely affect the community.

There are several reasons why the zone map amendment would adversely affect the community. The first is that there is no water in the region for the proposed Santolina development to use. For that reason, use of water for that proposed development would necessarily mean reduction in the amount of water that is available for other purposes. Particularly because of the size of the proposed development, that reduction in available water would adversely affect one or more sectors of the existing community.

The second reason that the zone map change would adversely affect the community is because of the impacts of construction of the proposed Santolina development on the sandy soils where it is proposed to be built. As was pointed out above, disturbance of those soils would probably result in erosion and air borne particulates that have the potential to cause air pollution and health problems, including asthma and upper and lower respiratory illness.

The third reason that the community would be adversely affected by the proposed amendment to the zone map is that the proposed Santolina development cannot be built without net expense to Bernalillo County and the City of Albuquerque. This was demonstrated by the analysis conducted by Kelly O'Donnell, who concluded that the Santolina Master Plan's assertion that no net expense would result from the proposed development was based on unrealistic assumptions. And, any net expense that would result

- from the proposed Santolina development would have to be borne by other sectors of the community, either in the form of higher taxes or in the form of reduced services.

IV. The zone map amendment is not consistent with the health, safety, and general welfare of the county.

Finally, the zone map amendment is not consistent with the health, safety, and general welfare of Bernalillo county because the development that would be permitted by the amendment would have adverse effects on the county. The first of these adverse effects would be the development's use of a very large amount of water that is not available in the county. The only way that this amount of water can be available from the county is if it is taken from sectors of the county community that are using the water, and that will be adversely affected if they lose their water.

As an example, if water is taken from surface water sources in the South Valley, the entities that will be harmed will be the South Valley acequias. If water is taken from the ground water aquifer in the South Valley, the many residents of that area who rely on wells will be adversely affected. In short, if the development's need for water is addressed by taking water from elsewhere in the county, some other sector of the county community will be impacted adversely.

Moreover, as was pointed out in the Bernalillo County Place Matters Report that is part of Attachment 27 to the Planning Staff's Report, water shortages cause health problems:

Water is not only important to the cultural and farming traditions of acequia users, but to our local residents as well. The availability of fresh, local produce generated through our local agriculture sector not only helps farmers, but also improves nutritionally based health outcomes such as obesity and diabetes. Healthy eating and regular physical activity can lower blood pressure and prevent a range of chronic diseases. ... Most

importantly, the availability of water is essential to the wellbeing, and life, of current residents.

The second adverse impact that construction of the proposed Santolina development would cause is the impact on health resulting from construction of such a large development on sandy soils. The hazards to health that can result from large scale construction in such soils were outlined above and in the Bernalillo County Place Matters report that is part of the record. *See* Attachment 27 to the Planning Staff's Report. And because the proposed Santolina development would be built out over a period of 40-50 years, the hazards to health resulting from construction at the development would not be a temporary phenomenon.

The third adverse impact on Bernalillo county that would result from the proposed Santolina development that the zone map amendment would authorize is an impact on the Bernalillo county economy that would result from the costs that would have to be incurred for the purpose of building schools for children living in the development. According to an October 24, 2013 email from Martin Eckert of the Albuquerque Public Schools to Enrico Gradi and others (which is part of Attachment 4 to the Planning Staff Report), all costs of schools for the development would have to be borne by taxpayers. Moreover, the Planning Staff Report concludes that the cost to taxpayers of the schools needed for the development (without considering the cost of the land required) would be \$654 million in today's dollars. Those costs would have a serious adverse effect on the county's general welfare.

The fourth adverse impact that the zone map amendment would have on the health, safety, and general welfare of the county is another fiscal impact that would result from the development that the zone map amendment is designed to authorize. As was pointed out earlier, that development probably could not be constructed at

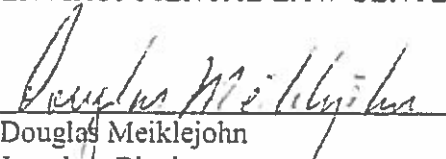
no net expense to the governments of Bernalillo County and the City of Albuquerque. As a result, construction of the development would cause one of two results. Either City and County revenues would have to be increased, probably through raises in taxes, or government services would have to be reduced. Either of those results would be contrary to the general welfare of the county.

Conclusion

The zone map amendment violates several of the requirements for zone changes of Bernalillo County Resolution 116-86. The Bernalillo County Board of County Commissioners should reverse the Planning Commission Decision approving the zone map amendment, and should rule that the zone map amendment cannot stand.

Dated: December 18, 2014.

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Certificate of Service

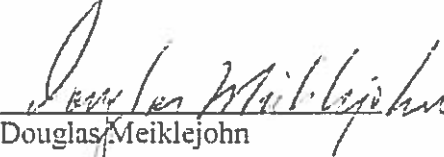
I certify that on December 18, 2014 copies of this Appeal were mailed to:

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